

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re:)	
)	
Irvin Maurice Martin and)	Case No. 08-51226
Jewel Lee Fox Martin,)	
)	
Debtors.)	

MEMORANDUM OPINION

This memorandum opinion supplements the Order Denying the Debtors' Motion to Incur Debt previously entered on August 16, 2011:

The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on July 25, 2008 (the "Petition Date"). An order confirming the Debtors' Chapter 13 plan (the "Plan") was entered on October 9, 2008. The Debtors' Plan provides for payments in the amount of \$145.00 per month with \$8,700.00 or a minimum dividend of 1% to be paid to general unsecured creditors. The Plan requires that the Debtors obtain the approval of the court before incurring any debt greater than \$1,000.00.

The Debtors' daughter is enrolled at the University of North Carolina - Greensboro ("UNCG") for the 2011-2012 academic year. On July 18, 2011, the Debtors filed a motion indicating that a UNCG financial aid counselor instructed the Debtors to apply for a Federal Direct Plus Loan. UNCG expects the Debtors to borrow approximately \$10,384.00 for each of their daughter's remaining years in college. Accordingly, the Debtors requested permission to incur debt in the form of student loans for their daughter for the fall 2011 semester and each subsequent semester as needed. UNCG anticipated that the Debtors would not be required to begin repaying the student loans until after the Plan is completed.

The principal purpose of the Bankruptcy Code is to grant a fresh start to the "honest but

unfortunate debtor.” *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991). Specifically, Chapter 13 allows a debtor with regular income to make payments to a trustee for the benefit of prepetition secured and unsecured creditors pursuant to a Chapter 13 plan. Chapter 13 provides a debtor with a fresh start by allowing the debtor to obtain a discharge after successful completion of a Chapter 13 plan. Generally, debtors should avoid incurring additional debts during the life of the plan except for necessities needed to perform under the plan, as post-petition debts have the potential to jeopardize the successful completion of a debtor’s plan, thereby depriving the debtor of a fresh start. It is well accepted that “[a]n adult child attending college is not a special circumstance that is out of the ordinary for an average family which leaves the Debtors no reasonable alternative but to incur the expense.” *In re Patterson*, 392 B.R. 497, 506 (Bankr. S.D. Fla.2008). *See also In re Baker*, 400 B.R. 594, 598 (Bankr. N.D.Ohio 2009); *In re Walker*, 383 B.R. 830, 838 (Bankr. N.D.Ga. 2008); *In re Saffrin*, 380 B.R. 191, 193 (Bankr. N.D.Ill. 2007).

Here, UNCG has instructed the Debtors to incur new debt which could total over \$40,000.00 for the benefit of their adult daughter. In a bankruptcy context, this expense for an adult child, which confers no benefit to the Debtors or their Plan, is not reasonably necessary. Furthermore, it is the duty of this court to effectuate the goals and purposes of the Bankruptcy Code, including the fresh start policy. To have granted the Debtors’ motion would defeat the fundamental purpose of the Debtors’ Chapter 13 by depriving them of a fresh start upon completion of their Plan.

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